



ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Protecting Sovereignty • Preserving Culture
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SINCE 1922

February 18, 2021

Via e-mail only

President Lawrence S. Bacow
Office of the President
Harvard University
Massachusetts Hall
Cambridge, MA 02138
president@harvard.edu

Re: Critical issues ignored about Harvard Peabody Museum's unconscionable delay in fulfilling its legal obligations under the Native American Graves Protection and Repatriation Act

Dear President Bacow,

Greetings and best wishes to you. The Association on American Indian Affairs (the "Association") is the oldest non-profit serving Indian Country protecting sovereignty, preserving culture, educating youth and building capacity. As part of its programs, the Association provides expertise, training and technical assistance, legislative and legal support, and other support to Native Nations regarding the repatriation of tangible cultural heritage. The Association wants to alert you to great concerns that were ignored by the recent news article published in the Harvard Magazine on January 28, 2021 titled, *Peabody Museum Discovers Possible Slave Remains in Its Collections*, and by your statement about developing a steering committee on these issues, including the repatriation of Native American Ancestors and cultural items pursuant to the Native American Graves Protection and Repatriation Act.

It is commendable that Harvard and its Peabody Museum have made statements acknowledging its racist and colonial history that has fed its collections and collecting practices. We recognize and are grateful that you have apologized "for Harvard's role in collection practices that placed the academic enterprise above respect for the dead and human decency." An apology is worthless unless it is accompanied by a change in behavior. Creating another steering committee on matters involving your legal obligations will only further delay repatriation to Native Nations and will create more levels of bureaucracy than

your already burdened processes. This is not acceptable. **Instead, we urge you to simply comply with federal law that has been in place more than 30 years, and to require the free, prior and informed consent of Native Nations affected by research and collection practices of your institutions.**

Unfortunately, Harvard's Peabody Museum is known by many in Indian Country as failing its legal, ethical and moral responsibilities to Native Nations; and your institution seems to be either wholly out of touch, or willfully unaware of these issues entrenched in processes that smack of institutional racism. Tribal representatives have endured the burden and ongoing historical trauma of Harvard's resistance and failure to simply follow the legal process of the Native American Graves Protection and Repatriation Act (NAGPRA). **In other words, the Association strongly believes your institution has been out of compliance with federal law, has done so willingly, and as a result, has caused continuing physical, emotional and spiritual trauma to Native Nations and their citizens.**

After 30 years of NAGPRA, you have only completed repatriation for 18.4% of the Ancestors in your collection; that means there are still 6,586 of our Ancestors and 13,610 of their burial belongings in boxes on shelves. Harvard has stolen Ancestors from at least 37 out of 50 states that represent potentially 542 of the 574 federally recognized Tribes in Indian Country today. You have significantly more deceased Native people in boxes on your campus than the number of live Native students that you allow to attend your institution (public reports state that there are **69 Native American students of more than 31,000 of your total student body**).

Other institutions with far less resources but with similar large collections have been more successful complying with NAGPRA than Harvard has. Compared to 41 other institutions with 1,000 or more Ancestors in their collections, Harvard Peabody ranks 27th in its ability to complete its legal obligations. What has Harvard been doing with its staff time and resources over the last three decades? Here is what we have been able to find out so far:

Harvard has received \$577,412 in federal NAGPRA grants since 1994 to perform inventories of Ancestral remains and their burial belongings. This does not include the hundreds of thousands of dollars of other federal and Tribal funding that Native Nations have invested in recovering their Ancestors from Harvard. Nor does it show that Harvard has prioritized its funding to comply with its federal legal responsibilities under NAGPRA.

Even with federal funds to comply with the law, staff at the Harvard's Peabody have expressly admitted that they did not develop their inventories of Native American Ancestral remains and funerary objects as required under the law. In fact, even though the Secretary of the Interior extended the Museum's 1995 timeline for five additional years (until 2000), the Museum chose to submit its inventories without consulting with Tribes as required by the law. **Even though your staff have expressly admitted to this - no one has gone back to fix it.**

To complete an inventory, the institution is mandated by NAGPRA to consult with potentially affiliated Tribes unless there is absolutely no information that ties the Ancestor to a potentially

affiliated Tribe. When reviewing the public information from your Museum, it is clear that only 214 out of 6,586 Ancestors have no geographic information connected to them - that means 96.75% of the Ancestors in your collections have information that will absolutely allow Tribal consultation and repatriation to take place.

Instead, the Harvard Peabody has labeled these Ancestors as "culturally unidentifiable," shifting the burden to Tribes to prove affiliation. The museum's failure to consult with Tribes has flipped NAGPRA on its head, allowing the institution to ignore its legal, ethical, moral and financial responsibilities to Native Nations and the Ancestors that you have stolen from their journey. We consider this an abuse of process, and potentially hundreds of instances of failure to comply under the law.

Furthermore, NAGPRA requires institutions to make a determination of affiliation based on the information it has in its possession, coupled with Tribal consultation, to affiliate and repatriate. Instead, Harvard Peabody is known to require Tribes to constantly develop new information and analysis beyond what is required under the law. NAGPRA expressly allows for gaps in information; the museum's determination to repatriate can simply be made based on the totality of information in the current possession of the institution. This is a legal process meant to repair assimilative and genocidal federal policy to the benefit of Native Nations - NAGPRA is not a research project; NAGPRA is not a scientific or academic inquiry. It is simply a legal step-by-step process created expressly for the sole benefit of Native Nations.

Even after providing additional information, Tribes have reported that Harvard Peabody will continue to refuse to make a determination to affiliate and repatriate, and continue to ask for more and more information. This is a situation that has happened on many occasions with Tribes around Indian Country. When an institution refuses to make a determination required by law, a Tribe is left without any due process under the law, and we believe your staff are aware of this. This is another abuse of process that Harvard Peabody continues to practice.

The 6,586 known Ancestors at the Museum does not include Harvard's federal collections that are not reported in their inventories. We are aware that the U.S. Bureau of Land Management ("BLM") reported to the NAGPRA Review Committee in October 2018 that it took 16 years of their dedicated effort to get the Museum to release information about their collections held there. BLM was not given any information until 2017, when it physically retrieved the collection of Ancestors and other detailed documentary and photographic information from the Museum. Even after that, BLM found there were at least two additional collections from Alaska at the Museum that had been traded to other institutions.

It is also our understanding that Harvard Peabody requires lengthy research reports to be written about a collection or item to be repatriated (which the Tribe may not have access to) before a repatriation will move forward. In addition, the institution requires a lengthy review by various levels of decision makers - even though the law mandates a 90-day turn-around from repatriation request to repatriation.

We are also aware of past completed repatriations where Harvard Peabody Museum denied Tribes the return of the burial belongings of the Ancestors being repatriated. Whether or not this is allowable under the law is not the issue. How can Harvard apologize for its past collection activities and collection practices while affirmatively refusing to return burial objects that were stolen along with our Ancestors' remains? This is Harvard asserting that its property rights over stolen cultural heritage are more important than healing the Native Nations that they have injured. Harvard's decision forced those Tribes to replicate and hand-make those items to provide them back to the Ancestors upon reburial - triggering more historical trauma. This hurtful choice has further degraded Tribes' trust in the integrity, ethics, and credibility of Harvard University and its Museum.

Moreover, Harvard's repatriation practices and procedures are unknown to the public or by Native Nations who are seeking repatriation and consultation with the institution. Harvard's Peabody offers no NAGPRA policy or procedures on its webpage. It is unclear why the museum would not want transparency in its efforts, unless it is working counter to its legal requirements under NAGPRA.

Further, Harvard Peabody's research protocols allow for continuing study of Native American Ancestors, their burial belongings and other sensitive cultural items without Native Nation free, prior and informed consent. Harvard permits individuals to study and perform destructive research on sensitive traditional, environmental, and DNA information that provides value only to the individual researcher and nothing to the original peoples that it has been stolen from, and without their consent. Is Harvard prepared to discontinue these harmful and intrusive research protocols and place an institution-wide research moratorium on all NAGPRA collections and sensitive cultural items?

Finally, Harvard allows searches of its collections online, which includes sensitive cultural and sacred items. The search tool allows for these objects to be viewed and in many cases, offers an image of these items and provenience information. This is offensive and against traditional protocols for many Tribes to photograph sacred objects and items of cultural patrimony. It is very clear that these items are being made available by search without regard to Tribal consultation and the free, prior and informed consent of Native Nations. This is another instance of blatant disregard for Native Nations over the power to control their own culture.

The actions of Harvard's Peabody regarding NAGPRA and research practices are undeniably procedural forms of institutional racism and colonization that continue to cause great harm. Repatriation of Native American Ancestors, their burial belongings, and other sacred and cultural patrimony is absolutely a form of healing - and it does not need another steering committee, level of study or added bureaucracy. There is a legal process that outlines what must be done. What Harvard and the Peabody Museum must do now is simply follow the mandate to repatriate under the law and seek the free, prior and informed consent of Native Nations when working with their culture.

Specifically, these are the demands that we are making of Harvard:

1. Hire an external Native American NAGPRA expert to develop a plan that includes affiliating the 96.75% of the culturally unidentifiable Ancestors and their burial belongings to culturally affiliated Tribes, after Tribal consultation, and repatriate in a reasonable amount of time.
2. Repatriate associated funerary objects that were not returned under the disposition process of 43 CFR sec. 10.11 and make it a written policy that Ancestors returned under section 10.11 will always include their burial belongings.
3. Publish your NAGPRA/repatriation process, if any, on a public on-line location and ensure that these processes have been developed in consultation with Native Nations.
4. Issue a university-wide research moratorium on all Native American items. Any future request for research on any of these collections must require Native Nation free, prior, and informed consent as well as Tribal consultation.
5. Remove the ability to search sensitive cultural heritage, including Native Ancestral remains, burial belongings and sacred and cultural patrimony unless and until the institution has obtained the free, prior and informed consent of the Native Nation affiliated with the items.

Thank you for your time and attention to this matter of human rights and social justice. The Association on American Indian Affairs, its Repatriation Working Group, partners and members are here to support your efforts to eliminate institutional racism and progress repatriation and healing. You may reach me directly at Shannon@Indian-Affairs.org.

Yakoke,



Shannon O'Loughlin (Choctaw)
Chief Executive & Attorney

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